

ORIGINALAO 243
REV 6/82MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

05 - 267

United States District Court		District DISTRICT OF DELAWARE
Name of Movant JOSEPH SCOTT	Prisoner No. 04194-015	Docket No. 99-CR-33-01 (RRM)
Place of Confinement F.C.I. Fairton, P.O. Box 420, Fairton, New Jersey 08320		
(include name upon which convicted)		
UNITED STATES OF AMERICA	V.	Joseph Scott (full name of movant)

MOTION

- Name and location of court which entered the judgment of conviction under attack **U.S. District Court for the District of Delaware**
- Date of judgment of conviction **January 31, 2000**
- Length of sentence **30 Years imprisonment, and 3 years supervised release.**
- Nature of offense involved (all counts) **Conspiracy to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 841(b)(1)(A) & §846 (Count One); and possession with intent to distribute cocaine base, in violation of 21 U.S.C. §841(b)(1)(A).**

5. What was your plea? (Check one)

- (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

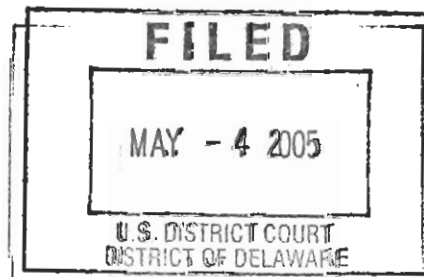
6. Kind of trial: (Check one)

- (a) Jury ☒
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

AO 243
REV 6/82

9. If you did appeal, answer the following:

- (a) Name of court UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
- (b) Result CONVICTIONS AFFIRMED, REMANDED FOR RESENTENCING ON SUPERVISED RELEASE TERM
- (c) Date of result May 7, 2001

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a)(1) Name of court United States District Court For The District Of Delaware
- (2) Nature of proceeding Motion Pursuant to 28 U.S.C. § 2255
- (3) Grounds raised Counsel was ineffective in 5 different aspects, inter alia, failing to: (1) file petition for writ of certiorari; (2) object that the jury instruction constituted a constructive amendment of the indictment; and (3) to argue that the Apprendi error in his case cannot be deemed a harmless error.
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☒ No ☐
- (5) Result Motion Granted with respect to claim that counsel was ineffective for file a petition for writ of certiorari.
- (6) Date of result June 23, 2003

(b) As to any second petition, application or motion give the same information:

- (1) Name of court United States Court of Appeals for the Third Circuit
- (2) Nature of proceeding Motion to recall mandate, under Rule 41.
- (3) Grounds raised Due to counsel's ineffectiveness, the Court was required to recall and reissued its mandate so that Petitioner could file a timely petition to the United States Supreme Court for writ of certiorari.

AO 243
REV 6/82

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Motion Granted

(6) Date of result January 13, 2004

(c) As to any third petition, application or motion, give the same information:

(1) Name of court United States Supreme Court

(2) Nature of proceeding Petition for writ of certiorari

(3) Grounds raised Petitioner's sentence violated his fifth amendment right to fair notice of the maximum penalty he was subject to, and his sixth amendment right to effective assistance of counsel. And that it was plain error for the District Court to impose sentences beyond the maximum sentence permitted for each of the two counts of conviction.

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Petition Denied

(6) Date of Result May 3, 2004

(d) Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(3) Third petition, etc. Yes ☐ No ☒

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.

AO 243
REV 6/82

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Counsel was ineffective for failing to recognize and
argue that the Rule announce in Apprendi applies to the Federal Sentencing Guidelines.

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

See Attached Memorandum of Law

B. Ground two: N/A

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

N/A

C. Ground three: N/A

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

N/A

AO 243
REV 6/82

D. Ground four:

N/A

Supporting FACTS (tell your story *briefly* without citing cases or law):

N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: Ground A, Petitioner is a layman of

law and was unaware that counsel was ineffective for failing to argue that
the ruling announced in Apprendi v. New Jersey applies to the Federal
Sentencing Guidelines.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mr. James J. Haley, Esq., 1716 Wawaset Street, P.O.
Box 199, Wilmington, Delaware 19899

(b) At arraignment and plea Same As Above

(c) At trial Same As Above

(d) At sentencing Same As Above

AO 243
REV 6/82

(e) On appeal Same As Above

(f) In any post-conviction proceeding Mr. Mark S. Greenberg, Esq., 1515 Locust Street,
Suite 900, Philadelphia, Pa. 19102

(g) On appeal from any adverse ruling in a post-conviction proceeding Motion To Recall Mandate.
Mr. Mark S. Greenberg, Esq.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5-01-05

(date)

Joseph S. Smith
Signature of Movant

Joseph Scott

04194-015

P.O. BOX 420

Fairton, NJ 08320

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SOUTH JERSEY

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Wilmington

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